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Attorney for the State

**BEFORE THE MONTANA STATE AUDITOR  
COMMISSIONER OF SECURITIES AND INSURANCE**

IN THE MATTER OF:	)	
	)	CASE NO.: INS-2016-299
BIG SKY CONSTRUCTION &	)	
ROOFING, INC. and JON JOSEPH	)	<b>NOTICE OF PROPOSED AGENCY</b>
HOOLEY,	)	<b>ACTION AND OPPORTUNITY</b>
	)	<b>FOR HEARING</b>
Respondents.	)	
	)	

Staff of the Office of the Montana State Auditor, Commissioner of Securities and Insurance, (CSI), by and through counsel, and pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101 et seq. (Code), proposes that the Montana State Auditor, Commissioner of Securities and Insurance (Commissioner), take specific action against the above-named Respondents for violating the Code.

**REASONS FOR ACTION**

This action alleges that Respondents primarily provided false or misleading subcontractor invoices in order to receive additional funds (such as overhead and profit) from insurance claims. Staff is proposing, pursuant to § 33-1-317, that the Commissioner impose a fine not to exceed \$25,000.00 for each violation of the Code for each Respondent, in addition to all other penalties imposed by the laws of Montana. There is probable cause to believe that the following facts, if true, justify and support such specific action. The Commissioner has authority to take such

*Big Sky Construction, et al.*

Notice of Proposed Agency Action and Opportunity for Hearing

action under the provisions of §§ 33-1-102, 33-1-311, 33-1-314, 33-1-317, 33-1-318, 33-1-701, 33-1-1202, 33-1-1203, and 33-1-1211.

### **ALLEGATIONS OF FACT**

1. Respondent Big Sky Construction & Roofing, Inc., (BSCR) is a domestic for profit corporation based in Billings, MT, that provides general contractor, construction, and roofing services to Montana residents.

2. Respondent Jon Joseph Hooley (Hooley) is a representative of Respondent BSCR. Respondent Hooley negotiates contracts with insureds, and negotiates the payment of invoices with insurers.

3. Between June of 2015 and May of 2016, Respondent BSCR worked with homeowners M.Q. and M.Q. to repair hail damage to their home.

a. On or about May 16, 2016, Respondent Hooley, on behalf of Respondent BSCR, provided to M.Q. a "final invoice." Respondent Hooley knew that M.Q. and M.Q. were insured by Mountain West Farm Bureau Mutual Insurance Company (Mountain West) and that they had submitted a claim for their hail damage. Respondent Hooley submitted the "final invoice" to M.Q. intending that the invoice go to Mountain West for payment by the insurer.

b. The "final invoice" contained line items for roof and siding repairs which were never completed. The items that were billed but not provided include: house wrap costing \$1,203.30; drip edge costing \$426.30; window caulking costing \$474.24; and an ice and water shield costing \$369.74. Respondent BSCR was paid a portion of the requested sum for these items by M.Q. from funds provided by Mountain West.

c. Mountain West requested invoices from subcontractors to justify payment of overhead and profit to Respondent BSCR. On or about May 16, 2016, Respondent Hooley, on behalf of Respondent BSCR, provided to M.Q. an "invoice" supposedly from Martinez Roofing, Inc., alleging a payment of \$14,448. Martinez Roofing, Inc., is owned and operated by Joel Martinez. Joel Martinez reviewed the "invoice" provided by Respondents BSCR and Hooley, and stated that it was falsified. Joel Martinez has never provided an invoice to BSCR on any roofing project, he typically charged only \$75.00 per square (roofing terminology for 100 square feet), and Joel Martinez never worked on the M.Q. home.

d. The "final invoice" also contained line items of \$10,149.48 for windows. When subcontractor invoices were requested, Respondent Hooley, on behalf of Respondent BSCR, provided a five-page quote from Montana Window & Door that ostensibly justified the \$10,149.48 invoice. However, Respondents never purchased the windows quoted by Montana Window & Door. Instead, Respondents purchased windows from Win-Dor Industries, and the invoice from that transaction lists the total cost for the windows at \$6,023.00.

e. Based on the incomplete work performed and false invoicing by Respondents, home-owners M.Q. and M.Q. have to redo much of the work supposedly completed by Respondents.

4. Between October of 2015 and March of 2016, Respondent BSCR repaired hail damage on a home owned by S.M., and negotiated payment from insurer Mountain West.

a. Mountain West requested invoices from subcontractors to justify payment of overhead and profit to Respondent BSCR. On or about December 14, 2015,

Respondent Hooley, on behalf of Respondent BSCR, submitted an "invoice" from Martinez Roofing, Inc., to Mountain West employee Josh Meyer alleging a payment of \$10,965.50.

b. Martinez Roofing, Inc., is owned and operated by Joel Martinez. Joel Martinez reviewed the "invoice" provided by Respondents BSCR and Hooley. Joel Martinez never provided an invoice to BCSR, and he charged them only \$75.00 per square, which on the M.S. house was \$2,349.75.

c. Respondent BSCR was paid in full by Mountain West on this false invoice. Thus, Respondent BSCR received an additional \$8,615.75 more than it paid to Martinez Roofing, Inc. Respondent BSCR also received an additional 20% payment for overhead and profit. In total, Mountain West paid Respondent BSCR \$10,338.90 more than they should have received.

5. Between July and December of 2015 Respondent BSCR repaired hail damage on a home owned by R.N. and R.H., and insured by Mountain West.

a. Mountain West requested invoices from subcontractors to justify payment of overhead and profit to Respondent BSCR. On or about December 14, 2015 Respondent Hooley, on behalf of Respondent BSCR, sent via email to Mountain West employee Josh Meyer an "invoice" from Big Sky Cleaning Services and a hand-written note ostensibly from Franco's Siding LLC, each in the amount of \$27,855.00.

b. Big Sky Cleaning Services is apparently connected to Respondent BSCR through owners/employees John DuPont and Paige Grandchamps. When Mountain West requested more information on Big Sky Cleaning Services, none was provided.

c. Mountain West paid R.N. and R.H. the invoiced amount of \$27,855.00, but did not pay the additional \$5,571.00 requested by Respondents BSCR and Hooley for overhead and profit.

6. Between roughly October and November of 2015, Respondent BSCR repaired hail damage on a home owned by M.M. and A.M. and insured by Mountain West.

a. Mountain West requested invoices from subcontractors to justify payment of overhead and profit to Respondent BSCR. On or about November 2, 2015, Respondent Hooley on behalf of Respondent BSCR submitted two “invoices” to Mountain West employee Travis Hewitt.

b. One “invoice” was ostensibly from Martinez Roofing, Inc., in the amount of \$11,462.50. Martinez Roofing, Inc., is owned and operated by Joel Martinez. Joel Martinez reviewed the “invoice” provided by Respondents BSCR and Hooley. Joel Martinez has never provided an invoice to BSCR on any roofing project, and Joel Martinez never worked on the M.M. and A.M. home. In addition, Joel Martinez states that he always charged Respondent BSCR \$75.00 per square for roofing, instead of the \$350.00 per square identified in the “invoice.”

c. The second “invoice” was ostensibly from Big Sky Cleaning Services, in the amount of \$3,412.93. Respondent Hooley claimed this invoice was for “Gutters, Corner Posts and Facia.” This amount was paid by Mountain West, however overhead and profit requested by Respondent BSCR was denied.

7. Between roughly March of 2016 and May of 2017, Respondent BSCR repaired hail damage on a home owned by M.J. and T.J. Mountain West was the insurer for M.J. and T.J.

a. Mountain West requested invoices from subcontractors to justify payment of overhead and profit to Respondent BSCR. On or around April 28, 2017, Respondent Hooley, on behalf of Respondent BSCR, submitted two invoices to M.J., intending those invoices to go to Mountain West for payment by the insurer.

b. The first invoice provided by Respondents was a quote from Montana Window and Door of \$16,056.80 for windows. Mountain West paid Respondents for this full amount. However, Respondents actually obtained the windows for this project from 406 Window Company, and paid 406 Window Company \$8,600.00.

c. The second invoice was ostensibly from Project Green, LLC, which billed \$11,271.49 for labor and materials for siding replacement. Mountain West inquired about Project Green, LLC, and discovered that it was owned by Respondent Jon Hooley, but did not appear to be in operation. Mountain West refused to pay the invoice bill for Project Green, and has not paid overhead and profit to Respondent BSCR.

d. Respondents were paid in full by Mountain West on the inaccurate invoice from Montana Window & Door. Thus, Respondents received an additional \$7,456.80 more than it paid 406 Window Company. In total, Mountain West paid Respondents \$7,456.80 more than they should have received.

### **ALLEGATIONS OF LAW**

1. The CSI has jurisdiction over this matter. § 33-1-311.
2. A “person” is an individual, insurer, company, association, organization, Lloyd’s, society, reciprocal, or interinsurance exchange, partnership, syndicate, business trust, corporation, or any other legal entity. § 33-1-102.

3. A person commits the act of insurance fraud when the person, for the purpose of obtaining any money or benefit, presents or causes to be presented to any insurer any written or oral statement containing false, incomplete, or misleading information concerning any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy. § 33-1-1202(1).

4. Separately, a person commits the act of insurance fraud when the person assists, abets, solicits, or conspires with another to prepare or make any written or oral statement containing false, incomplete, or misleading information concerning any fact that is intended to be presented to any insurer or in connection with, material to, or in support of any claim for payment or other benefit pursuant to an insurance policy or contract. § 33-1-1202(2).

5. Respondent BSCR committed at least nine separate acts of insurance fraud by creating and/or submitting to Mountain West false or misleading "final" invoices that contained work that was not performed, or false or misleading invoices from subcontractors, in support of claims for payment under insurance policies.

6. Respondent Hooley committed at least nine separate acts of insurance fraud by creating and/or submitting to Mountain West false or misleading "final" invoices that contained work that was not performed, or false or misleading invoices from subcontractors, in support of claims for payment under insurance policies.

7. Pursuant to §§ 33-1-317 and 33-1-1211(1)(a), the Commissioner may impose a fine not to exceed \$25,000 upon a person for each violation of the Code.

8. Pursuant to § 33-1-1211(1)(b), the Commissioner may require Respondents to pay the cost of any hearing in this matter.

9. Pursuant to § 33-1-1211(3), the Commissioner shall require a person who committed insurance fraud to make restitution to the insurer or any other person for all financial loss sustained as a result of the insurance fraud.

10. Pursuant to § 33-1-318(1)(a), the Commissioner may issue an order directing a person to cease and desist from continuing an act or practice that is a violation of the Code after reasonable notice and opportunity for a hearing.

### **RELIEF REQUESTED**

WHEREFORE, the CSI seeks the following relief:

1. Pursuant to §§ 33-1-317 and 33-1-1211(1)(a), the imposition of a fine upon each Respondent not to exceed the sum of \$25,000 per each violation of the Code;

2. Pursuant to § 33-1-1211(1)(b), the imposition upon Respondents, jointly and severally, the costs of any hearing in this matter;

3. Pursuant to § 33-1-1211(3), restitution from each Respondent for all financial loss sustained as a result of each act of insurance fraud; and

4. Pursuant to § 33-1-318, the issuance of an order commanding the Respondents to cease and desist violating the Code.

### **STATEMENT OF RIGHTS**

You are entitled to a hearing to respond to this notice, and to present evidence or arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, § 2-4-601 et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place, and nature of the hearing.



If you want to contest the proposed action, you must advise the Commissioner within 21 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to:

Michael A. Kakuk,  
Office of the Montana State Auditor, Commissioner of Securities and Insurance  
840 Helena Avenue  
Helena, Montana 59601

Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any other adverse action against a professional license. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103(1973), and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

#### **CONTACT WITH COMMISSIONER'S OFFICE**

If you have questions or wish to discuss this matter, please contact Michael A. Kakuk, attorney for the CSI, at 840 Helena Avenue, Helena, MT, 59601, or at (406) 444-2040. If an attorney represents you, please make any contacts with this office through your attorney.

**POSSIBILITY OF DEFAULT**

Failure to give notice or to advise of your demand for a hearing or informal procedure within 21 days will result in the entry of a default order imposing the disciplinary sanctions against you without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 26<sup>th</sup> day of July, 2017.



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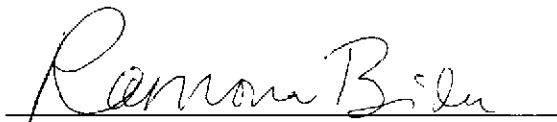
MICHAEL A. KAKUK  
Attorney for CSI

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the Notice of Proposed Agency Action and Opportunity for Hearing was served on the 26<sup>th</sup> day of July, 2017, by U.S. mail, certified first-class postage paid, to the following:

Big Sky Construction & Roofing, Inc.  
c/o Rod Hamman  
Calton Hamman & Wolff, PC  
2075 Central Ave., Suite 4  
Billings, MT 59102

Jon Joseph Hooley  
c/o Ashley Harada  
Harada Law Firm  
PO Box 445  
Billings, MT 59103

  
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